No. 102

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1952

EDDIE BRATBURD AND
RUTH E. BRATBURD,

*Petitioners,*

VS.

STATE OF MARYLAND,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

### STATEMENT OF THE CASE

This is a petition for a writ of certiorari to the Court of Appeals of Maryland. Petitioners were arrested in Montgomery County, Maryland, under State warrants which charged them with violation of Section 50-3 of the Montgomery County (Maryland) Code, 1950 Edition; viz. having in their possession various items of gambling paraphernalia including "lists, slips and records on numbers drawn in a lottery" (4-5).* Petitioners filed motions to dismiss the warrants, assigning several grounds for such motions (2-3). These motions were overruled by Judge Woodward.

* References are to appendix to Petitioners' brief.

Thereupon, Petitioners filed in the United States District Court for the District of Maryland a bill for an injunction against Walter A. Dawson, State's Attorney for Montgomery County, and three police officers of that County. By that bill, Petitioners sought to enjoin the divulging of the contents of telephone conversations learned by the defendants in that case by tapping the telephone wires leading to Petitioners' home. That bill of complaint was dismissed by District Judge W. Calvin Chesnut. *McGuire, et al. v. Amrein, et al.* and *Bratburd, et al. v. Dawson, et al.*, 101 F. Supp. 414. See also *Stefanelli v. Minard*, 96 L. ed. (Adv. Sh.) 99 and footnote 12.

Thereupon, the cases against Petitioners were tried in the Circuit Court for Montgomery County, Maryland. Each Petitioner was tried separately before Judge Prescott and a jury. Numerous exhibits were offered in evidence which had been obtained by the execution of a search and seizure warrant obtained as a result of the wire-tapping. In each case, the jury rendered a verdict of guilty. Each Petitioner was sentenced to serve six months in the Montgomery County (Maryland) jail and to pay a fine of $500.00 and court costs (1).

Appeals were taken from those judgments to the Court of Appeals of Maryland. The judgments were affirmed by a unanimous court in an opinion by Judge Delaplaine (78-84), .... Md. ...., 88 A. (2d) 446.

## QUESTIONS PRESENTED

### I.

*Was the Use of the Evidence Obtained by Wiretapping a Deprivation of Petitioners' Rights Under the Fourteenth Amendment to the Constitution of the United States?*

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II.

*Was the Statute Under Which Petitioners Were Prosecuted Null and Void, Resulting in a Deprivation of Petitioners' Rights Under the Fourteenth Amendment to the Constitution of the United States?*

III.

*Was the Search and Seizure Warrant Executed in This Case Null and Void, Resulting in a Deprivation of Petitioners' Rights Under the Fourteenth Amendment to the Constitution of the United States?*

## STATEMENT OF THE FACTS

Beginning with June 17, 1951, and extending through June 22, 1951, members of the Police Department of Montgomery County investigated Petitioners and the premises 8869 Piney Branch Road, Silver Spring, Maryland (a two story dwelling owned by them.) Petitioners were suspected of violating the gambling laws of Montgomery County (5-15). During that period, Corporal Kenneth W. Watkins and Officer Reuben D. Hett tapped the telephone wires leading to such premises and to the telephone located in such premises bearing number Shepard 0925 (a non-published number listed to Petitioner Eddie Bratburd) (5, 6-7). As a result of that wire tap, the police overheard numerous telephone conversations, to and from the suspected premises, concerned with lottery bets. Such conversations were related in considerable detail in the sworn application for a search and seizure warrant executed by Corporal Watkins on June 26, 1951 (7-15). The application was supported by the affidavit of Officer Hett (16-18).

Based upon the facts set forth in the application, Judge Woodward determined that there was probable cause to be-

lieve that the gambling laws of Montgomery County were being violated in the premises referred to above and issued a search and seizure warrant on June 27, 1951, directed to Corporal Watkins, commanding him to enter the premises 8869 Piney Branch Road, Silver Spring, Maryland and search for and seize any and all gambling paraphernalia prohibited by such laws (18-30). On the same day the warrant was executed, a report and return were made to Judge Woodward showing the seizure of numerous items indicating violation of the gambling laws (30-32).

## ARGUMENT

### I.

### WAS THE USE OF THE EVIDENCE OBTAINED BY WIRETAPPING A DEPRIVATION OF PETITIONERS' RIGHTS UNDER THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES?

Petitioners contend that the use of evidence, secured by wiretapping, in the obtention of the search and seizure warrant issued in this case and in the actual trial of the case deprived Petitioners of their rights under the Fourteenth Amendment to the Constitution of the United States. It is conceded by the State that the search and seizure warrant was issued upon a sworn application wherein the facts, which the trial court found constituted probable cause, had all been obtained by means of wiretapping. The State denies, however, that any of the testimony adduced by the State in the trial below was concerned with evidence obtained by means of intercepted telephone communications. The only testimony of this nature was brought out by the defense in the trial of the case against Petitioner Eddie Bratburd (transcript of testimony in that case pages 13-14). It is true that the State offered, and the trial court admitted, the application and the search and seizure warrant. However, that was merely to prove the legality of

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the entry of the police into Petitioners' home; there is no indication that either the application or the search and seizure warrant was read to the jury.

The history of decisions of the courts and legislation regarding the use of evidence obtained by means of wiretapping is briefly as follows:

In the case of *Olmstead v. United States,* (1928) 277 U.S. 438, 464-466, 72 L. Ed. 944, 950-951, the Supreme Court of the United States held that wiretapping "did not amount to a search and seizure within the meaning of the 4th Amendment"; that, therefore, evidence obtained by means of wiretapping was admissible, even though obtained by unethical or illegal means.

Subsequent to that decision, the Congress of the United States enacted the Federal Communications Act of 1934 (47 U.S.C.A. 605), which reads as follows:

> "No person receiving or assisting in receiving, or transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, to any person other than the addressee, his agent, or attorney, or to a person employed or authorized to forward such communication to its destination, or to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, or to the master of a ship under whom he is serving, or in response to a subpoena issued by a court of competent jurisdiction, or on demand of other lawful authority; and no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person; and no person not being entitled thereto shall receive or assist in receiving any interstate or

foreign communication by wire or radio and use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto; and no person having received such intercepted communication or having become acquainted with the contents, substance, purport, effect, or meaning of the same or any part thereof, knowing that such information was so obtained, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto: *Provided*, That this section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication broadcast, or transmitted by amateurs or others for the use of the general public, or relating to ships in distress."

Since the passage of that Act, the Supreme Court of the United States has decided six cases construing it.

In *Nardone v. United States*, 302 U. S. 379, 82 L. Ed. 314, the petitioners had been indicted, tried, convicted and sentenced under charges of smuggling alcohol, possession and concealment of smuggled alcohol and conspiracy to smuggle and conceal it. In the trial of the case, Federal agents had testified, over petitioners' objection, to the substance of petitioners' interstate telephone communications which had been intercepted and overheard by the witnesses. The only question presented by that appeal was: did the Federal Communications Act of 1934 apply to the United States of America and to Federal officers? After considering the rule of exclusion of the sovereign, this Court held that the statute did apply on the principle "that the sovereign is embraced by general words of a statute intended to prevent injury and wrong".

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*Nardone v. United States,* 308 U.S. 338, 84 L. Ed. 307. At the second trial of the case, at which evidence concerning the telephone messages was excluded, the question presented was whether the Act did not also make incompetent testimony which had become accessible by the use of unlawful wiretapping. Relying upon the decision in the case of *Silverthorne Lumber Co. v. United States,* 251 U.S. 385, 64 L. Ed. 319, this Court held that the Act should be so construed; that "If knowledge of them (facts) is gained from an independent source that may be proved like any others, *but the knowledge gained by the Government's own wrong cannot be used by it simply because it is used derivatively*" (italics supplied).

*Weiss v. United States,* 308 U.S. 321, 84 L. Ed. 298. The petitioners had been indicted, tried, convicted and sentenced under charges of using the mails to defraud and conspiracy so to use them. The charge was based upon alleged fraudulent insurance claims. Verbatim transcriptions of intrastate telephone messages, obtained by means of wiretapping, were used as evidence in the trial. They were used in the following manner: Certain defendants who had turned State's evidence, were put on the stand and handed transcripts of certain telephone messages. The witness was asked whether he could repeat the conversations verbatim. Upon his statement that he could not do so without the use of the typed transcriptions, he was permitted to read them to the jury. In addition to this, phonograph records and typewritten transcripts, which had been identified by such witnesses, were admitted into evidence. The primary question presented by this case was the applicability of the Federal Communications Act of 1934 to intrastate communications. This Court held that if the means of communication tapped by the Government agents are susceptible of use in intrastate as well as interstate communication, then

the Act makes it unlawful to divulge such messages, it being immaterial whether or not the lines cross State boundaries.

*Goldstein v. United States,* 316 U. S. 114, 86 L. Ed. 1312. The petitioner was indicted, tried, convicted and sentenced under charges of using the mails to defraud and conspiracy so to use the mails. The question presented by this case was whether the sanction for violation of the Federal Communications Act of 1934 should be extended so as to make it available to one who was not a party to the intercepted communications. This Court held that the rule should not be so extended and affirmed the decision below, which had permitted testimony concerning intercepted telephone communications as against the petitioner who was not a party to such communication. In that case, the parties to the telephone communications had testified concerning the substance of such communications. In so holding, this Court said:

> "We are of opinion that even though the use made of the communications by the prosecuting officers to induce the parties to them to testify were held a violation of the statute, this would not render the testimony so procured inadmissible against a person not a party to the message. This is the settled common law rule. There was no use at the trial of the intercepted communications, or of any information they contained as such. If such use as occurred here is a violation of the Act, the statute itself imposes a sanction."

*Goldman v. United States,* 316 U.S. 129, 86 L. Ed. 1322. The petitioners had been indicted, tried, convicted and sentenced for conspiracy to violate a provision of the Bankruptcy Act "by receiving, or attempting to obtain, money for acting, or forebearing to act, in a bankruptcy proceeding". The particulars of the charges were that certain lawyers had conspired together to rig the sales price of bankruptcy assets. Federal officers had obtained evidence con-

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cerning telephone messages by use of a detectaphone, which had a receiver so delicate that when played against the partition wall between two rooms it could pick up the conversations taking place in the adjoining room. This Court held that evidence concerning such messages obtained in the manner stated was properly admitted by the trial court; that use of the detectaphone was not a violation of the Fourth Amendment. The Court was unable to distinguish the question presented from that raised in *Olmstead v. United States, supra.*

*On Lee v. United States,* decided by the Supreme Court of the United States on June 2, 1952, .... U.S. ...., 96 L. Ed. (Adv. Shts.) 770. The petitioner had been charged with violation of the narcotics laws. The Government undercover agent was "wired for sound", having a small microphone in his inside overcoat pocket and a small antenna running along his arm. Conversations between the agent and petitioner were thus broadcast to another agent located outside petitioner's place of business. That agent was permitted to testify as to the conversations overheard by him as a result of the broadcast. This decision was affirmed in an opinion by Mr. Justice Jackson. The Court held that this did not amount to an unlawful search and seizure such as is proscribed by the Fourth Amendment and that the action of the Government agents did not constitute wiretapping, and did not, therefore, violate the provisions of the Federal Communications Act of 1934. The Court said: "There was no interference with any communications facility which he (petitioner) possessed or was entitled to use. He was not sending messages to anybody or using a system of communications within the Act".

The Court of Appeals of Maryland has decided three cases, in addition to the one here under consideration, which

were concerned with the admissibility of evidence obtained as a result of wiretapping, all of which were subsequent to the decision of the Supreme Court of the United States in the case of *Olmstead v. United States, supra,* and the enactment of the Federal Communications Act of 1934 (47 U.S.C.A. 605). *Hitzelberger v. State,* 174 Md. 152, 165-169; *Rowan v. State,* 175 Md. 547, 559, and *Leon, et al. v. State,* 180 Md. 279, 283, 285. In *Leon, et al. v. State, supra,* the appellant filed with the Supreme Court of the United States a petition for the writ of certiorari under the title of *Neal v. State,* 316 U. S. 680, 86 L. Ed. 1757, which petition was denied. Likewise, in the case of *People v. Kelley,* 122 P. (2d) (Cal.) 655, 137 P. (2d) (Cal.) 1, which was decided adversely to the contention here made by Petitioners, an appeal was taken to the Supreme Court of the United States and was dismissed, 320 U.S. 715, 88 L. Ed. 420. Rehearing was denied by this Court, 321 U.S. 802, 88 L. Ed. 1089. In *Leon, et al. v. State, supra,* the Court of Appeals of Maryland, although recognizing that the ban against the interception and divulgence of telegraph or telephone communications extended, under the Federal Communications Act of 1934, to intrastate as well as interstate messages held that "in view of the decision in the *Olmstead* case, * * * evidence procured by wiretapping is not prohibited in the state courts, either by the Federal Constitution or by the Federal Communications Act".

The decisions of the Maryland Court of Appeals referred to above were based upon the common law rule — in effect in Maryland — that the admissibility of evidence is not affected by the illegality of the means by which it is obtained. This rule, that the admissibility of evidence is not affected by the unethical or illegal manner by which it is obtained, was recognized by the Supreme Court of the United States in the case of *Olmstead v. United States,*

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*supra*, and has been followed as recently as the decisions in *Goldstein v. United States, supra*, and *Goldman v. United States, supra*. The only exception, in Maryland, to this rule is in the trial of misdemeanors where the evidence, sought to be introduced, is obtained by an illegal search and seizure. Annotated Code of Maryland, 1947 Supplement, Article 35, Section 5, as amended by the Laws of 1951, Chapters 704 and 710. This exception does not apply to the present case for the reason that wiretapping does not constitute a search and seizure. *Olmstead v. United States, supra; Hitzelberger v. State, supra; Rowan v. State, supra; Leon, et al. v. State, supra.* If evidence obtained by such means is admissible at the trial, *a fortiori* it can be used in applying for a search and seizure warrant.

The cumulative effect of the decisions just discussed is that the use of intercepted telephone communications in the trial of criminal cases is not absolutely forbidden under any and all conceivable circumstances even in the Federal courts. In any event, where such use is forbidden, the basis for the decision is the Federal Communications Act of 1934 — not the Constitution of the United States. Consequently, this petition does not present to this Court a question of whether or not Petitioners have been deprived of any of their rights under the Constitution of the United States.

Referring to the authorities cited by Petitioners, among others, they rely upon the Declaration of Rights of the State of Maryland. Attention is called to the fact that in the case of *Hannis Distilling Co. v. Baltimore*, 216 U. S. 285, 294, 54 L. Ed. 482, 486, the Supreme Court of the United States held as follows:

> "* * * Beyond dispute, in the Carstairs Case the court of last resort of Maryland upheld the act here in controversy as an exertion of the taxing power of the

> state, and in so doing declared that it but reiterated and re-expounded rulings by it previously made. It follows that, as for the purposes of a review by this court of alleged questions concerning the repugnancy of the taxing act to the Constitution of the United States, the decision of the state court, maintaining, under the state Constitution, the validity of the taxing power which the act exerted, was binding upon this court, it must result that contentions to the contrary are so devoid of merit as to present no substantial Federal question. Castillo v. McConnico, 168 U. S. 674, 42 L. ed. 622, 18 Sup. Ct. Rep. 229. * * *"

See also *Patterson v. Stanolind Oil & Gas Co.*, 305 U. S. 376, 379, 83 L. Ed. 231, 233. In the recent decision of the Supreme Court of the United States in *Stefanelli v. Minard*, ..... U. S. ....., 96 L. Ed. (Adv. Shts.) 99, petitioner had sought equitable relief from the United States District Court to prevent the use of evidence obtained as a result of an allegedly unlawful search and seizure in a criminal trial in the New Jersey courts. In affirming the decision of the trial court, which dismissed the complaint, this Court, through Mr. Justice Frankfurter, said (101):

> "We hold that the federal courts should refuse to intervene in State criminal proceedings to suppress the use of evidence even when claimed to have been secured by unlawful search and seizure."

Petitioners also rely upon the case of *Wolf v. Colorado*, 338 U. S. 25, 93 L. Ed. 1782. However, examination of that case indicates that it is authority for respondent's contention rather than for the claims of Petitioners. The Court reaffirmed previous decisions of the Court to the effect that "due process of law" is not shorthand for the first eight Amendments. The Court held that "in a prosecution in a State court for a State crime the Fourteenth Amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure".

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It is respectfully submitted, therefore, that no Federal question is presented by this petition and that the prayer of the writ should be denied.

## II.

**WAS THE STATUTE UNDER WHICH PETITIONERS WERE PROSECUTED NULL AND VOID, RESULTING IN A DEPRIVATION OF PETITIONERS' RIGHTS UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITER STATES?**

Next, Petitioners contend that the Act under which they were prosecuted was null and void, and that, therefore, they were deprived of their rights under the Fourteenth Amendment to the Constitution of the United States. The claim that such Act was null and void is based upon the theory that, by the adoption of the charter form of government in Montgomery County, this particular statute was repealed. This claim was carefully considered by the Court of Appeals of Maryland (79-81), and it was held that the statute under which the prosecution was instituted was "still in force".

In arguing this point, Petitioners assert that, by virtue of the provisions of the Constitution of Maryland, Article 11A, and of the Express Powers Act (Annotated Code of Maryland (1939 Edition), Article 25A), Section 50-3 of the Montgomery County Code (1950 Edition) is no longer in force and effect. Petitioners argue that the combined effect of the constitutional provision authorizing the Charter Form of Government and of the Express Powers Act, enacted pursuant to that provision, is that when Montgomery County adopted a charter form of government Section 50-3 was automatically repealed and, therefore, is no longer in force and effect. In support of this argument, they refer to the provisions of the Annotated Code of Maryland (1939 Edition), Article 25A, (Express Powers Act), Section 3(A), which provides as follows:

"Local Legislation.

To enact local laws for such county, including the power to repeal or amend local laws thereof enacted by the General Assembly upon the matters covered by the express powers in this Article granted; to provide for the enforcement of all ordinances, resolutions, by-laws and regulations adopted under the authority of this Article by fines, penalties and imprisonment, enforceable according to law as may be prescribed, but no such fine or penalty shall exceed $100.00 for any offense or imprisonment for more than six months."

Petitioners also refer to the provisions of Section 50-7 (Mont. Co. Code, 1950), which reads as follows:

"Any person or persons, house, company, association or body corporate, upon conviction for violation of any of the provisions of this chapter, shall be subject to a fine of not exceeding $1,000 or imprisonment in jail for a period of not more than one year, or both such fine and imprisonment, in the discretion of the Court."

Petitioners contend that as Section 50-7 provides for a fine in excess of $100 and for imprisonment in excess of six months, it is contrary to the provisions of Article 25A, Section 3(A), supra, and is no longer in effect and the sentences imposed by the trial court in these cases thereunder are void and of no effect.

Sections 50-1 to 50-8 (Mont. Co. Code, 1950) were enacted by the Laws of 1924, Chapter 483. They have not been either repealed or amended by the General Assembly of Maryland since that date and are, therefore, in full force and effect, unless a repealer was effected by the adoption of the charter form of government in Montgomery County. It is respectfully submitted that the adoption of the Charter had no such effect.

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The Constitution of Maryland, Article 11A, Section 1, in part, provides as follows:

> "* * * if a majority of the votes cast for and against the adoption of said charter shall be in favor of such adoption, the said charter from and after the thirtieth days from the date of such election shall become the law of said City or County, subject only to the Constitution and Public General Laws of this State *and any public local laws inconsistent with the provisions of said charter and any former charter of said the City of Baltimore or County shall be thereby repealed.*" (Italics supplied.)

Petitioners do not contend that there is any inconsistency between the provisions of the Charter adopted by Montgomery County and the public local law in question. As a matter of fact, no such contention can successfully be made. The Charter for Montgomery County, Article II, Section 4, deals with the specific legislative powers of the County Council and, in part, provides that such Council is authorized to "Enact public local laws for the County and repeal or amend local laws for the County heretofore enacted by the General Assembly upon the matters covered by the Express Powers Act of 1918 (Article 25A, Annotated Code of Maryland, Edition 1939) as now in force or hereafter amended, * * *" Mont. Co. Code, 1950, p. xxvii. Article IX of the Charter deals with Transitory Provisions. Section 6, Existing Laws, provides as follows:

> "The public local laws of Montgomery County and all regulations, rules, and ordinances of the County Commissioners acting in any capacity, in force at the time this Charter becomes law, are repealed to the extent that they are clearly inconsistent with provisions of this Charter, but no further, and all other such public local laws, regulations, rules, and ordinances shall continue in full force and effect until repealed or amended." Mont. Co. Code, 1950, p. xliv.

There being nothing inconsistent between the provisions of the Charter and the provisions of Section 50-1 to 50-8 of the Montgomery County Code (1950 Edition), the latter remains in full force and effect.

In addition to this, it is to be noted that under the Annotated Code of Maryland, Article 25A, Section 3(A), referred to above, the power of a County which has adopted a Charter under the home rule amendment to *enact local laws for such County* includes "*the power to repeal or amend local laws thereof enacted by the General Assembly*". This provision shows quite definitely that, in the absence of an inconsistency between a public local law and the provisions of a charter, public local laws are not *per se* repealed but remain in effect until and unless repealed by legislation by the County Council. Then and only then would the limitation on maximum fine and imprisonment apply. Section 3(A) of Article 25A does not in any way provide that public local laws, which were enacted by the General Assembly prior to the adoption of a charter form of government and which have not been repealed by County Council legislation and which are not inconsistent with the provisions of the Charter, shall be automatically repealed if the penalty provided exceeds $100 or if the provision for imprisonment exceeds six months. It necessarily follows, therefore, that Sections 50-3 and 50-7 remain in full force and effect. There is, therefore, no substance to this contention of Petitioners.

Finally, as no Federal question is presented by this petition, the rule announced in *Hannis Distilling Co. v. Baltimore*, *supra*, and *Patterson v. Stanolind Oil and Gas Co.*, *supra*, applies. See also *Stefanelli v. Minard*, supra.

## III.

**WAS THE SEARCH AND SEIZURE WARRANT EXECUTED IN THIS CASE NULL AND VOID, RESULTING IN A DEPRIVATION OF PETITIONERS' RIGHTS UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES?**

Finally, Petitioners claim that the search and seizure warrant executed by the police in this case was null and void because issued by a Judge who was not authorized to issue such a warrant under what Petitioners contend was the applicable statute; that, therefore, Petitioners were deprived of their rights under the Fourteenth Amendment to the Constitution of the United States.

This point was urged in the argument of the case before the Court of Appeals of Maryland and was decided adversely to Petitioners, the Court saying (81):

> "Therefore, although the warrant under attack was issued by the Chief Judge of the Circuit Court to authorize the search for gambling paraphernalia 'as prohibited by Section 50-3 of the Montgomery County Code,' and although Section 50-5 of that Code authorizes only Justices of the Peace and the Clerk of the Circuit Court to issue search warrants, yet the Chief Judge had authority to issue the warrant under the Maryland search warrant statute. It is not essential to the validity of a search warrant that it shall mention the particular statute by authority of which it is issued."

As stated under the previous point, as no Federal question is presented by this petition, the rule announced in *Hannis Distilling Co. v. Baltimore, supra,* and *Patterson v. Stanolind Oil and Gas Co., supra,* applies. See also *Stefanelli v. Minard, supra.*

## CONCLUSION

It is respectfully submitted that there is no merit to any of the contentions raised by Petitioners in their petition and brief and that there is no Federal question presented for the consideration of this Court, and that, therefore, the petition should be denied.

Respectfully submitted,

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